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STATE OF WASHINGTON

No.  
**SUPREME COURT**  
**OF THE STATE OF WASHINGTON**

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GENE CHAMPAGNE, CARY BROWN, ROLAND KNORR,  
and CHRISTOPHER SCANLON, Petitioners,

v.

THURSTON COUNTY, Respondent.

\_\_\_\_\_  
**PETITION FOR REVIEW**  
\_\_\_\_\_

FILED  
COURT OF APPEALS  
DIVISION II  
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STATE OF WASHINGTON  
BY \_\_\_\_\_  
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1  
2 **I. IDENTITY OF PETITIONERS**

3 Petitioners Gene Champagne, Cary Brown, Roland Knorr, and  
4 Christopher Scanlon, corrections officers for the Thurston County  
5 Sheriff's Office in Thurston County, Washington, ask this court to accept  
6 review of the Court of Appeals decision terminating review designated in  
7 Part II of this Petition.

8 **II. COURT OF APPEALS DECISION**

9 On August 8, 2006, the Court of Appeals affirmed the trial court's  
10 summary dismissal of Petitioners' statutory wage and hour claims against  
11 their employer, Thurston County. The trial court granted summary  
12 judgment in favor of Thurston County finding that the pre-filing claim  
13 notice procedures in RCW 36.45.010, RCW 4.96.010, and RCW  
14 4.96.020 required Petitioners to first file a notice of claim with the  
15 County prior to commencing their statutory causes of action (based on  
16 WAC 296-128-035) for the delayed payment of wages.

17 The Court of Appeals affirmed, but on different grounds. The  
18 Court of Appeals held that regardless of whether or not the claim notice  
19 procedures apply to statutory wage and hour claims brought against a  
20 county, Petitioners have failed to state an actionable claim for damages  
21 under Washington's Minimum Wage Act, RCW Ch. 49.46, Wage  
22 Payment Act, RCW Ch. 49.48, or Wage Rebate Act, RCW Ch. 49.52. In  
23 so holding, the Court of Appeals found that "under Washington's wage-

1 and-hour laws, employees are entitled to damages only where an  
2 employer has paid *no* compensation to an employee,” and Washington  
3 law “does not provide a statutory remedy for the County’s alleged ‘delay’  
4 in paying overtime and other additional wages . . . .” A-4-5.

5 A copy of the decision is in the Appendix at pages A-1 to A-6.

6 **III. ISSUES PRESENTED FOR REVIEW**

7 1. Whether a statutory remedy exists for an employer’s failure  
8 to pay all wages in compliance with the time frames required by law in  
9 WAC 296-128-035?

10 First Assignment of Error: The Court of Appeals erred in  
11 concluding that Washington law does not provide a statutory remedy for  
12 an employer’s failure to pay overtime wages in accordance with the time  
13 period specified in WAC 296-128-035. The Court of Appeals further  
14 erred in concluding that WAC 296-128-035 applies only to violations of  
15 minimum wage laws under RCW Ch. 49.46 and monetary damages are  
16 limited to circumstances in which an employer fails to pay statutory  
17 minimum wages.

18 2. If the preceding issues are resolved in favor of Petitioners,  
19 whether Washington’s Tort Claim Act requires the filing of a notice with  
20 the county prior to bringing suit for statutory causes of action based on  
21 alleged wage and hour violations under state law?

22 Second Assignment of Error: The trial court erred in granting the  
23 defendant’s motion for summary judgment and concluding that putative

1 class action wage and hour claims are subject to Washington's Tort  
2 Claims Act, RCW 4.96.010 and 4.96.020, and the requirements in RCW  
3 36.45.010.

4 **IV. STATEMENT OF THE CASE**

5 Petitioners are four corrections officers for the Thurston County  
6 Sheriff's Office ("Sheriff's Office") in Thurston County, Washington.  
7 (Complaint, ¶ 1.1, CP 4). For Sheriff's Office employees, a group which  
8 collectively includes Thurston County's deputy sheriffs, administrative  
9 staff, and corrections officers, the County's payroll system is set up on a  
10 monthly basis. (CP 243). That is, employees are paid monthly and, in this  
11 case, on the last day of the month. (*Id.*; CP 78).

12 For any given monthly pay period, Sheriff's Office employees,  
13 including Petitioners, submit timesheets covering the first of the month to  
14 the last of the month. Time sheets are submitted on or around the last  
15 business day of the month and employees are generally paid their  
16 regularly reoccurring salary on the last day of the same month. (CP 78-  
17 79). However, the time sheets also reflect when an employee worked  
18 overtime or a specialty assignment during the course of the month which  
19 would entitle the employee to overtime compensation, compensatory  
20 time, specialty pay, supervisor pay and/or holiday pay (hereinafter  
21 collectively "wage payments").

22 Because Thurston County's policies require Sheriff's Office  
23 employees to turn in timesheets reflecting wage payments earned during



1 the previous pay period on or around the end of the current month, the  
2 wage payments are made at the end of the *following* month. (CP 78-79).  
3 If, for example, a Sheriff's Office employee earned overtime on March 3,  
4 he would not be compensated for that time until April 30— almost two  
5 months later — despite the passage of the intervening March 31 pay day.

6 On September 29, 2004, Petitioners, individually and on behalf of  
7 a class of similarly situated individuals employed by Thurston County,  
8 filed this action against Thurston County claiming that the County's wage  
9 practices violate Washington wage and hour laws. Specifically,  
10 Petitioners assert that Thurston County's practice of withholding the  
11 wage payments at issue for up to two months violates WAC 296-128-  
12 035. The regulation provides in full:

13 "All wages due shall be paid at no longer than monthly  
14 intervals to each employee on established regular pay days.  
15 To facilitate bookkeeping, an employer may implement a  
16 regular payroll system in which wages from up to seven  
days before pay day may be withheld from the pay period  
covered and included in the next pay period."

17 WAC 296-128-035. The Complaint seeks damages, costs, and attorneys'  
18 fees in accordance with the civil enforcement provisions in both the  
19 Minimum Wage Act, RCW 49.46.090, Wage Payment Act, RCW  
20 49.48.030, and Wage Rebate Act, RCW 49.52.070. (CP 7).

21 Subsequent to the filing of the Complaint, the Thurston County  
22 bench recused itself from the case and on March 23, 2005, the  
23 Honorable Vicki L. Hogan was assigned as a visiting judge. (CP 41). On

1 September 30, 2005, the County moved for summary judgment on  
2 Petitioner's Complaint asserting that Washington's Tort Claims Act  
3 precluded Petitioner from bringing suit without first filing a claim for  
4 damages with the County. (CP 42-69). It is not in dispute that Petitioners  
5 did not file a tort claim notice with the County. (Complaint, ¶ 1.4, CP 4).  
6 The County's motion presented a single legal issue: "whether plaintiffs'  
7 Complaint must be dismissed because plaintiffs have failed to comply  
8 with the statutory prerequisites of RCW 36.45.010, RCW 4.96.010 (1)  
9 and RCW 4.96.020 (1)-(2)." (CP 42). The County argued at summary  
10 judgment both that Washington's Tort Claims Act applies generally to  
11 any and all "claims for damages," including statutory causes of action,  
12 and it applies specifically to Petitioners' statutory wage and hour claims  
13 because such claims, according to the County, are "based upon a  
14 contract." (CP 42, 47 n.3).

15 On October 31, 2005, the trial court entered an order granting  
16 Thurston County's motion for summary judgment "due to plaintiffs'  
17 failure to comply with the statutory prerequisites for filing suit against  
18 Thurston County as provided in RCW 36.05.010 [sic], RCW 4.96.010 (1)  
19 and RCW 4.96.020(1)-(2). (CP 282-83).

20 On November 16, 2005, Petitioners filed a Notice of Appeal of the  
21 trial court's summary judgment order. (CP 295-298). The parties limited  
22 their briefs and arguments before the Court of Appeals to single issue of  
23 whether RCW 36.45.010, RCW 4.96.010, and RCW 4.96.020 mandates

1 the filing of a notice of claim prior to Petitioners bringing their statutory  
2 wage and hour claims against the County.

3 On August 8, 2006, the Court of Appeals affirmed the trial court's  
4 summary dismissal of Petitioners' claims. The Court of Appeals held that  
5 regardless of whether the claim notice procedures apply to statutory wage  
6 and hour claims brought against a county, Petitioners failed to state an  
7 actionable claim for damages under Washington's Minimum Wage Act,  
8 RCW Ch. 49.46, Wage Payment Act, RCW Ch. 49.48, or Wage Rebate  
9 Act, RCW Ch. 49.52. In so holding, the Court of Appeals found in  
10 pertinent part that "under Washington's wage-and-hour laws, employees  
11 are entitled to damages only where an employer has paid *no*  
12 compensation to an employee," and Washington law "does not provide a  
13 statutory remedy for the County's alleged 'delay' in paying overtime and  
14 other additional wages" A-5-6. Petitioners now seek review of the lower  
15 courts' respective rulings'.

16 **V. ARGUMENT WHY REVIEW SHOULD BE ACCEPTED**

17 **A. The Court of Appeals Incorrectly Held Washington**  
18 **Law Does Not Provide A Statutory Remedy For The**  
**Delayed Payment of Wages.**

19 The Court of Appeals incorrectly held no cause of action exists  
20 based solely on an employer's failure to comply with the requirements of  
21 WAC 296-128-035. The decision of the Court of Appeals fails to  
22 recognize this Court's holding that violations of substantive agency  
23

1 regulations are redressable through the civil enforcement provisions in the  
2 enacting statutes, *see Wingert v. Yellow Freight Sys., Inc.*, 146 Wn.2d  
3 841, 50 P.3d 256 (2002), and Washington's wage and hour statutes  
4 clearly provide Petitioners a civil remedy in this case. Moreover, the  
5 decision of the Court of Appeals allows an employer to delay the payment  
6 of wages – by days, by weeks, by months, or by years – without the  
7 adversely impacted employees having any remedy under Washington's  
8 wage and hour laws and regulations, a result inconsistent with the letter  
9 and spirit of the law.

11 **1. Petitioners Have a Statutory Remedy For the  
12 Delayed Payment of Wages Under The MWA.**

13 Washington's Minimum Wage Act ("MWA"), RCW Ch. 49.46,  
14 sets forth a statutory minimum wage, *see* RCW 49.46.020, and further  
15 specifies conditions under which other wages, such as overtime compen-  
16 sation, must be paid to employees. With regard to overtime compensa-  
17 tion, the MWA's general rule is that those hours in excess of 40 per week  
18 shall be compensated in cash at a rate not less than one and one-half  
19 times the regular rate at which the employee is employed, or, in limited  
20 circumstances, with compensatory time off. RCW 49.46.130(1), (2)(b).

21 The MWA authorizes Washington's Department of Labor &  
22 Industry ("DLI") to "prescribe by regulation as necessary or appropriate  
23 for the enforcement of the provisions of [RCW Ch. 49.46] or the

regulations thereunder.” RCW 49.46.040(3). In Washington “properly promulgated, substantive agency regulations have the force and effect of law.” *Wingert*, 146 Wn.2d at 848. That is, WAC regulations are to be considered substantive statutes, enforceable through the civil enforcement provisions of the enacting statute. *Id.*

In addition, the MWA makes clear that violations of regulations promulgated under the authority of the MWA are enforceable through the MWA. Specifically, RCW 49.46.090 provides a remedy to employees where an employer “pays an employee less than wages to which such employee is entitled under *or by virtue of this chapter.*” RCW 49.46.090 (emphasis added).

In 1989, the DLI adopted WAC 296-128-035 in accordance with the authority granted by the MWA. *See* Wash. St. Reg. 89-22-016 (Oct. 24, 1989).<sup>1</sup> WAC 296-128-035 describes when wage payments become due and provides in full:

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<sup>1</sup> Prior to 1989, an earlier version of the time-of-payment regulation existed in the context of DLI’s Industrial Welfare regulations. *See* WAC 296-126-023. Under the Industrial Welfare Act, RCW Ch. 49.12, and the DLI’s implementing regulations, the state, its political subdivisions, and municipal corporations were free to enact local laws that prevented application of the time-of-payment regulation. *See* WAC 296-126-001(4) (1983). In 1989, and pursuant to the DLI’s perceived extension of the MWA to “almost all state employees as a result of the passage of Initiative 518,” Wash. St. Reg. 89-16-089 (August 2, 1989), the DLI promulgated the current version of WAC 296-128-035 under the authority of the more-encompassing MWA. In doing so, the DLI extended the recordkeeping and time-of-payment requirements to all employers covered by the MWA so as to “establish uniform recordkeeping and pay interval requirements under both” the

1 All wages due shall be paid at no longer than monthly  
2 intervals to each employee on established regular pay days.  
3 To facilitate bookkeeping, an employer may implement a  
4 regular payroll system in which wages from up to seven days  
5 before pay day may be withheld from the pay period covered  
6 and included in the next pay period.

7 WAC 296-128-035. By setting forth a comprehensive scheme regarding  
8 payment intervals, the DLI has demonstrated its intent to ensure workers  
9 receive all wages earned during a pay period on a designated pay date.<sup>2</sup> In  
10 doing so, the DLI specified which wages must be paid on each pay date –  
11 “all wages” – and has specified that an employer may only withhold  
12 wages due for the pay period covered for “up to seven days” without  
13 payment. *Id.*

14 In Thurston County, the County has adopted a practice of requiring  
15 employees to submit time cards at month’s end. While employees are  
16 generally paid their regularly reoccurring salaries at the end of the same  
17 month, the County’s practices have the effect of unlawfully delaying the  
18 payment of the wage payments at issue. If, for example, a Sheriff’s  
19 Office employee earned overtime on March 3, he would turn in a time  
20 sheet reflecting the overtime on March 31 and would not be compensated

21 Industrial Welfare Act and the Minimum Wage Act. Wash. St. Reg. 89-16-089 (August  
22 2, 1989); Wash. St. Reg. 89-21-011 (Oct. 6, 1989).

23 <sup>2</sup> Such intent could not be more evident. The DLI has published the time-of-  
payment requirements in three separate regulations. *Compare* WAC 296-128-035 with  
WAC 296-126-023 and WAC 296-131-010.

1 for that time until April 30 – almost two months later. Petitioners’  
2 Complaint alleges this practice violates WAC 296-128-035.

3       While the Court of Appeals held that the MWA permits an  
4 employer to recover compensation in the amount equivalent to the  
5 statutory minimum wage, *see* A-4, at n.4, the Court found that “monetary  
6 damages under the Minimum Wage Act are limited to circumstances in  
7 which an employer fails to pay statutory minimum wages, which is not  
8 the case here.” A-5, at n.5. This ruling fails to recognize both that the  
9 MWA specifies requirements for the payment of overtime compensation  
10 and that the MWA incorporates requirements – such as those existing in  
11 WAC 296-128-035 – that arise by virtue of the MWA.

12       The MWA clearly provides a remedy to Petitioners arising out of  
13 the County’s violation of WAC 296-128-035. WAC 296-128-035’s time-  
14 of-payment requirements, which apply to “all wages,” exist by virtue of  
15 the MWA, RCW 49.46.040(3). The remedy requested in Petitioner’s  
16 Complaint tracks the civil enforcement provisions in RCW 49.46.090 in  
17 so much as Petitioner’s seek recovery of monetary damages for Thurston  
18 County’s violation of WAC 296-128-035. The Court of Appeals erred in  
19 concluding no such remedy exists.

20       The Court of Appeals focused on the fact that the delayed wages  
21 were *eventually* paid. However, while Petitioners concede that the wages  
22 at issue were eventually paid, the fact remains that a violation of the  
23 regulation occurred. The Court of Appeal’s conclusion that any payment

1 of wages – delayed or otherwise – waives an employee’s right to seek  
2 redress for a violation of WAC 296-128-035 would sanction the payment  
3 of wages at *any* time and at the employer’s whim, so long the wages are  
4 *eventually* paid. Taken to its logical extreme, the lower court’s view  
5 supports a conclusion that a payment of wages prior to commencement of  
6 a lawsuit, or perhaps even prior to a final judgment on an employee’s  
7 wage claim, bars any claim by the employee arising out of a violation of  
8 WAC 296-128-035. Such a result, however, is clearly not intended by the  
9 regulation. The interpretation offered by the Court of Appeals would read  
10 any meaning out of the regulation itself and create a superfluous rule.  
11 *Accord Lewis v. State, Department of Licensing*, 125 Wn. App. 666, 678,  
12 105 P.3d 1029 (2005) (courts “construe a statute so that no portion is  
13 rendered meaningless or superfluous”)<sup>3</sup>.

14 It is entirely consistent with WAC 296-128-035 and the civil  
15 enforcement provisions in RCW 49.46.090 to conclude that wages are not  
16 considered “paid” unless they are paid within the time provided for in the  
17 regulation. Treating the delayed payment of wages equivalent to a non-

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18  
19 <sup>3</sup> If the Court of Appeals is correct, and an employee only possesses a claim  
20 based on WAC 296-128-035 when an employer has completely failed to pay an  
21 employee a minimum wage, no employee would ever possess an independent claim for  
22 violations of WAC 296-128-035 because the statutory claim would subsume a claim  
23 based on the regulation. However, *Wingert*, 146 Wn.2d 841, clearly holds that  
employees maintain independent causes of action for an employer’s violation of a  
substantive regulation.



1 payment of wages is consistent federal courts holdings under the Fair  
2 Labor Standards Act ("FLSA") and its interpretive regulations.<sup>4</sup> The  
3 FLSA, like Washington's MWA, requires in pertinent part that "no  
4 employer shall employ any of his employees . . .for a workweek longer  
5 than forty hours unless such employee *receives* compensation for his  
6 employment" at the prescribed statutory rate. 29 U.S.C. § 207 (emphasis  
7 added). To satisfy the requirements of section 207, an employee must  
8 actually "receive" compensation and, according to *Biggs v. Wilson*, 1  
9 F.3d 1537 (9th Cir. 1993), "wages are 'unpaid' unless they are paid on  
10 the employees' regular payday." *Id.* at 1543 In *Biggs*, the Court found  
11 that paying state employees 14 to 15 days after the regular payday was in  
12 violation of the FLSA's requirement for the prompt payment of wages. 1  
13 F.3d at 1543.

14 Likewise, in *Brooks v. Village of Ridgefield Park*, 185 F.3d 130  
15 (3d Cir. 1999), the court found that police officers' overtime  
16 compensation remain "unpaid" for purposes of an FLSA claim when it  
17 was accumulated and deferred (but eventually paid) for as much as six  
18  
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20 <sup>4</sup> Prior to the decision below. WAC 296-128-035 had not been specifically  
21 addressed by Washington courts. In construing the provisions of Washington wage and  
22 hour laws, courts will often consider interpretations of similar requirements arising  
23 under the FLSA. *See, e.g., Drinkwitz v. Alliant Techsystems, Inc.*, 140 Wn.2d 291, 300,  
996 P.2d 582 (2000).

1 weeks after their regular payday. *Id.* at 136-37. Additionally, in *O'Brien*  
2 *v. Town of Agawam*, 350 F.3d 279, 298 (1st Cir. 2003), the court  
3 concluded the FLSA's time-of-payment requirement was violated even  
4 where the parties collective bargaining agreement provided for a different  
5 compensatory scheme. *Id.* at 297-98.

6 In short, Petitioners' claims under the MWA are based on Thurston  
7 County's violation of WAC 296-128-035, which exists by virtue of the  
8 MWA. Violations of WAC 296-128-035 are remediable by operation of  
9 RCW 49.46.090. The fact that Petitioners were eventually paid their  
10 wages fails to satisfy the requirements for prompt payment under the  
11 regulation. For those reasons, Petitioners have stated a cognizable claim  
12 under the MWA and the Court of Appeal's conclusion to the contrary  
13 must be reversed.

14 **2. Petitioners Have a Statutory Remedy For the**  
15 **Delayed Payment of Wages Under The WPA.**

16 Washington's Wage Payment Act, RCW 49.48 *et seq.*, provides in  
17 relevant part that:

18 It shall be unlawful for any employer to withhold or  
19 divert any portion of an employee's wages unless the  
deduction is:

- 20 (1) Required by state or federal law; or  
21 (2) Specifically agreed upon orally or in  
22 writing by the employee and employer; or  
23

1 (3) For medical, surgical or hospital care or  
2 service, pursuant to any rule or regulation . . . .”

3 RCW 49.48.010.

4 Although the Wage Payment Act contains no definition of  
5 “wages,” courts have applied the definition contained in a related statute,  
6 RCW 49.46.010(2), which states: “[w]age’ means compensation due to  
7 an employee by reason of employment.” *Hayes v. Trulock*, 51 Wn. App.  
8 795, 806, 755 P.2d 830 (1988). *See also Bates v. City of Richland*, 112  
9 Wn. App. 919, 940, 51 P.3d 816 (2002).

10 Like the term “wages,” the Wage Payment Act does not define  
11 what constitutes unlawfully “withhold[ing] or divert[ing] any portion of  
12 an employee’s wages.” However, like the MWA, the DLI has been given  
13 concurrent administrative enforcement powers for claims of failure to pay  
14 wages under the Wage Payment Act. *See* RCW 49.48.040-.070. Thus, in  
15 accordance with WAC 296-128-035, wages are unlawfully “withheld” in  
16 contravention to the requirements in RCW 49.48.010 if not paid “at no  
17 longer than monthly intervals to each employee on established regular  
18 pay days.” WAC 296-128-035.

19 Employees who have had their wages unlawfully withheld in  
20 violation of RCW 49.48.010 have a private right of action against the  
21 employer wrongfully withholding their wages. *Wingert*, 146 Wn.2d at  
22 850. Here, Petitioners have exercised their private right of action by  
23 bringing this lawsuit.

1       The Court of Appeal's response to Petitioners' claims under the  
2 Wage Payment Act are that "neither chapter 49.46 RCW nor chapter  
3 49.48 RCW provide for monetary awards when an employer has in fact  
4 paid the employees their due wages." A-5, at n.5 (citing *Seattle Prof's*  
5 *Eng'g*, 139 Wn.2d at 831). Again, the Court of Appeals ignores the  
6 existence of WAC 296-128-035, ignores that the DLI has been given  
7 concurrent administrative enforcement powers under the Wage Payment  
8 Act, and ignores that its ruling has the effect of sanctioning the delayed  
9 payment of wages as it gives employees no means of challenging a  
10 violation of WAC 296-128-035. This ruling should be reversed.

11                               **3. Petitioners Have a Statutory Remedy For the**  
12                               **Delayed Payment of Wages Under The WRA.**

13       Washington's Wage Rebate Act, RCW 49.52 *et seq.*, supplements  
14 the MWA and mandates the payment of any wages arising under "statute,  
15 ordinance, or contract." RCW 49.52.050(2). The civil enforcement  
16 provisions in the Wage Rebate Act provide for an award of twice the  
17 amount of the wages unlawfully withheld upon a showing that the  
18 employer's actions were willful and with the intent to deprive the  
19 employee of any part of his wages. *Id.*; RCW 49.52.070.

20       The Court of Appeal held that RCW 49.52.070 does not provide a  
21 statutory remedy for the County's alleged delay in paying overtime or  
22 other wage payments called for by Petitioners contract of employment. In  
23 so holding, the Court of Appeals ruled that Petitioners "cannot claim

1 damages under RCW 49.52.070 for violations of [ ] other wage-and-hour  
2 laws” and that WAC 296-128-035’s time-of-payment provisions “appl[y]  
3 only to violations of minimum wage laws under chapter 49.46 RCW, not  
4 chapters 49.48 and 49.52 RCW.” A-5, at n.5. As illustrated by this  
5 Court’s decision in *Wingert v. Yellow Freight Sys., Inc.*, 146 Wn.2d  
6 841, 50 P.3d 256 (2002), the lower court’s decision is wrong on a number  
7 of levels.

8       In *Wingert*, employees brought suit alleging that their employer  
9 violated WAC 296-128-092(4) by requiring them to work longer than  
10 three consecutive hours without a paid rest period. 146 Wn.2d at 846.  
11 The employees sought back wages for the rest periods during which they  
12 were required to work and an award of attorney fees and costs pursuant to  
13 the Wage Rebate Act, RCW 49.52.070. The defendant asserted in  
14 relevant part that RCW Ch. 49.12, the statute under which WAC 296-  
15 128-092(4) was adopted, does not create a civil cause of action for a  
16 breach of the administrative regulation. This Court held that “[a]though  
17 WAC 296-128-092 is a regulation and not a statute, RCW 49.52.050(2) is  
18 applicable in this case because ‘properly promulgated, substantive agency  
19 regulations have the force and effect of law.’” *Id.* (citations omitted). The  
20 Court concluded that the employees had a claim arising under the Wage  
21 Rebate Act and an implied cause of action under the enabling statute,  
22 RCW Ch. 49.12. *Id.* at 849-50.

23

1 Here, like in *Wingert*, Petitioners' claims arise out of the violation  
2 of a regulation promulgated by the DLI. The Court of Appeal's decision  
3 is fundamentally at odds with this Court's prior holdings because, as  
4 recognized in *Wingert*, the Wage Payment Act, RCW 49.52.070 in fact  
5 permits a claim based on the violation of a wage and hour regulation.

6 Second, the Court of Appeal's ruled that WAC 296-128-035's  
7 time-of-payment provisions apply only to unpaid minimum wages. This  
8 conclusion was error because the language of the regulation extends its  
9 operation to "all wages." See WAC 296-128-035. The County's failure to  
10 pay all wages to Petitioners in accordance with the time limits sets forth  
11 in WAC 296-128-035 constitutes a violation of a substantive agency  
12 regulation for which the Wage Rebate Act provides a remedy upon a  
13 showing of willfulness.

14 **B. Review Is Appropriate Because The Petition Involves**  
15 **An Issue of Substantial Public Interest.**

16 In determining whether an issue is appropriate for review before  
17 this Court, Petitioners must demonstrate that the Petition involves an  
18 issue of substantial public interest. RAP 13.4(b)(4). This case presents a  
19 prime example of an issue of substantial public interest. The Court of  
20 Appeals holding, while affecting parties to this proceeding, also has the  
21 potential to affect wage practices throughout the state.

22 In WAC 296-128-035, the DLI has set forth a minimum standard  
23 for the payment of wages which applies to virtually all employers within

1 the State of Washington. *See* RCW 49.46.010(4) (defining “employer” as  
2 “any individual, partnership, association, corporation, business trust, or  
3 any person or group of persons acting directly or indirectly in the interest  
4 of an employer in relation to an employee”), *and* WAC 296-128-010  
5 (extending record keeping requirements and time-of-payment  
6 requirements to all employees who are subject to the Minimum Wage  
7 Act). The Court of Appeals’ decision has the potential to create  
8 exceptions to the time-of-payment requirements in WAC 296-128-035  
9 that have a significant negative effect on workers across the state in  
10 contravention to past policies of the Legislature and the DLI not strongly  
11 favoring the payment of all wages due employees.

12 WAC 296-128-035 exists in the context of Washington’s “long  
13 and proud history of being a pioneer in the protection of employee  
14 rights,” *International Ass’n of Fire Fighters v. City of Everett*, 146 Wn.2d  
15 29, 35, 42 P.3d 1265 (2002), and the regulation furthers Washington’s  
16 “strong policy in favor of payment of wages due employees.” *Schilling v.*  
17 *Radio Holdings, Inc.*, 136 Wn.2d 152, 157, 961 P.2d 371 (1998). *See*  
18 RCW 49.46.005 (noting “vital and imminent concern” over “minimum  
19 standards of employment”); RCW 49.52.050 (imposing criminal liability  
20 resulting from willfully withholding wages); RCW 49.48.010 (requiring  
21 that wages be paid timely upon termination of employment). Remedial  
22 statutes and regulations, such as WAC 296-128-035, “should be liberally  
23 construed to advance the Legislature’s intent to protect employee wages

1 and assure payment.” *Ellerman v. Centerpoint Prepress, Inc.*, 143 Wn.2d  
2 514, 520, 22 P.3d 795 (2001).

3 Finally, the Court of Appeals erroneous treatment of employer’s  
4 obligations with respect to delayed wages has the potential to chill  
5 employee actions to remedy such abuses, a result inconsistent with the  
6 letter and spirit of the law. For all of those reasons, the lower court’s  
7 ruling must be reversed.

8 **C. Statutory Causes of Action Are Not Subject to**  
9 **Washington’s Tort Claims Act.**

10 The Court of Appeals avoided the question of whether plaintiffs  
11 pursuing statutory wage and hour claims against their public employer  
12 must first file a notice of claim. The trial court answered in the  
13 affirmative. Should this Court reach this issue, Petitioners believe that the  
14 trial court’s ruling was in error and must be reversed for the simple fact  
15 that the Washington statute that has the effect of waiving a public entity’s  
16 immunity from common law tort claims has no application with respect  
17 to claims brought under a separate and distinct statutory scheme such as  
18 the Minimum Wage Act, Wage Payment Act, and Wage Rebate Act.

19 In RCW Ch. 4.96, the legislature has waived governmental  
20 immunity for common law tort claims. In doing so, the legislature placed  
21 limitations on that waiver in so much as claimants pursuing claims  
22 against a county are first required to file a notice of claim with the county  
23 prior to filing a lawsuit. RCW 4.96.010-.020. The trial court relied on this



1 statute to dismiss Petitioner's wage claims. However, Petitioners' claims  
2 are not predicated upon the waiver of immunity in RCW Ch. 4.96;  
3 Petitioners' claims are based on violations of the Minimum Wage Act,  
4 the Wage Payment Act, and the Wage Rebate Act. It is the statute  
5 underlying a cause of action which specifies what procedural  
6 requirements must be satisfied prior to bringing suit. *See Wilson v. City of*  
7 *Seattle*, 122 Wn.2d 814, 824, 863 P.2d 1336 (1993). Neither the  
8 Minimum Wage Act, Wage Payment Act, nor the Wage Rebate Act  
9 contain a claim filing process that must be complied with prior to suing a  
10 county. Accordingly, the trial court erred when it dismissed Petitioner's  
11 claims for failing to comply with inapplicable procedural requirements.

12 **VI. CONCLUSION**

13 This Court should accept review for the reasons indicated in Part V  
14 and reverse the decision of the Court of Appeals, and remand this case to  
15 the trial court to permit Petitioners to proceed with their statutory wage  
16 claims against the County.

17 DATED this 31 day of August, 2006.

18 Respectfully submitted,

19  
20 Will Aitchison, WSBA #32658  
21 Hilliary McClure, WSBA #31852  
22 Mark Crabtree, *pro hac vice* 80215  
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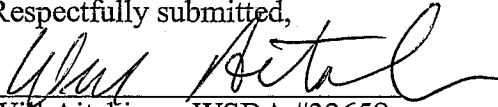
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10 county. Accordingly, the trial court erred when it dismissed Petitioner's  
11 claims for failing to comply with inapplicable procedural requirements.

## 12 VI. CONCLUSION

13 This Court should accept review for the reasons indicated in Part V  
14 and reverse the decision of the Court of Appeals, and remand this case to  
15 the trial court to permit Petitioners to proceed with their statutory wage  
16 claims against the County.

17 DATED this 14 day of September 2006.

18 Respectfully submitted,

19 

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FILED  
COURT OF APPEALS  
DIVISION II

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STATE OF WASHINGTON

BY \_\_\_\_\_

DEPUTY

No.

SUPREME COURT

OF THE STATE OF WASHINGTON

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BY C. J. HERMITT

CLERK

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GENE CHAMPAGNE, CARY BROWN, ROLAND KNORR,  
and CHRISTOPHER SCANLON, Petitioners,

v.

THURSTON COUNTY, Respondent.

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APPENDIX

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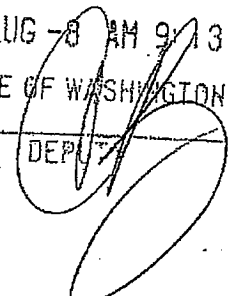
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FILED  
COURT OF APPEALS  
DIVISION II

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STATE OF WASHINGTON

BY  DEPUTY

**IN THE COURT OF APPEALS OF THE STATE OF WASHINGTON**

**DIVISION II**

GENE CHAMPAGNE, CARY BROWN,  
ROLAND KNOOR, and CHRISTOPHER  
SCANLON individuals and as representatives  
of a class of Thurston County overtime eligible  
employees,

Appellants,

v.

THURSTON COUNTY, a political  
subdivision of the State of Washington,

Respondent.

No. 34039-9-II

PUBLISHED OPINION

Hunt, J. — Thurston County correction officers Gene Champagne, et al., (Correction Officers) appeal summary dismissal of their statutory wage-and-hour laws claim against their employer, the Thurston County Sheriff's Office (County). The Correction Officers assert that the trial court erred in granting the County's motion for summary judgment, based on their failure to file a notice of claim with the County under RCW 36.45.010. They argue that their claims are statutorily based and, therefore, are not subject to RCW 36.45.010. Holding on alternative grounds that the trial court properly dismissed the Correction Officers' action, we affirm.

## FACTS

### I. WAGE CLAIMS

Gene Champagne, Cary Brown, Roland Knorr, and Christopher Scanlon are corrections officers with the Thurston County Sheriff's Office. At least since 2001, the County has regularly paid Correction Officers and other County employees on the last work day of each month for regular wages earned that month.

Correction Officers are subject to a collective bargaining agreement, which determines the amounts of their regular wages and the amounts for additional pay, including overtime, compensatory time, specialty pay, supervisory pay, and holiday pay. If Correction Officers earn additional pay beyond their regular wages, they must submit the appropriate form to the County at the end of each month. The County then includes the additional pay in the Correction Officers' next paychecks, which the County issues at the end of the following month.

Correction Officers do not dispute that the County paid them all wages, both regular and additional, due under the collective bargaining agreement.<sup>1</sup> Rather, they contend that the County violated Washington's wage and hour laws by paying additional wages the month after Correction Officers earned them and submitted additional pay forms.

### II. PROCEDURE

Correction Officers acknowledge that they did not first present their claims to the County before filing their lawsuit in superior court.

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<sup>1</sup> Nor do Correction Officers assert any violation of their collective bargaining agreement.

Correction Officers sued the County for violation of (1) the Minimum Wage Act, WAC 296-128-035 and chapter 4.96 RCW; (2) the Wage Payment Act, RCW 49.48.010; and (3) the Wage Rebate Act, RCW 49.52.070. They asked the superior court (1) to award them double wages as damages under RCW 49.52.070; (2) to consider them a class under CR 23 and to certify them as the class representatives; and (3) to award them attorney fees, costs, prejudgment interest, and any other relief the court deemed equitable.

The County moved for summary judgment for failure to file a claim with the County before seeking judicial review. The trial court (1) ruled that Correction Officers had failed to comply with statutory prerequisites for filing suing the County—RCW 36.45.010,<sup>2</sup> RCW 4.96.010, and RCW 4.96.020; (2) granted the County's motion for summary judgment; (3) denied Correction Officers' request for class-action certification and attorney fees; and (4) dismissed their lawsuit without prejudice.

The Correction Officers appeal.

#### ANALYSIS

Correction Officers argue that their claims under chapters 49.46 RCW (minimum wage), 49.48 RCW (wage payment and collection), and 49.52 RCW (wage deduction and contribution) are statutorily based and, therefore, not subject to RCW 36.45.010's and chapter 4.96 RCW's requirement that they must first file their claims with the County

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<sup>2</sup> The trial court's order cites RCW 36.05.010, which appears to be a single-digit typographical error. The trial court likely intended to cite RCW 36.45.010.

before filing a lawsuit.<sup>3</sup> Correction Officers further argue that the County violated these cited wage-and-hour laws when it unlawfully delayed their additional pay until a month after they earned it.<sup>4</sup>

The County responds that (1) Correction Officers' claims are subject to RCW 36.45.010, (2) Correction Officers failed to provide notice of claim to the County before filing their lawsuit, and (3) the trial court properly dismissed their lawsuit. Regardless of whether RCW 36.45.010 could apply to wage-and-hour-law claims, we need not address this issue here because, even assuming the Correction Officers' wage-and-hour-law claim was properly brought, they fail to establish a right to recover.

Correction Officers alleged in their complaint only that they were entitled to double damages under RCW 49.52.070. In so doing, they failed to state an actionable claim because, under Washington's wage-and-hour laws, employees are entitled to damages only where an employer has paid *no* compensation to an employee. See *Seattle Prof'l Eng'g Employees Ass'n v. Boeing Co.*, 139 Wn.2d 824, 831, 991 P.2d 1126 (2000).

---

<sup>3</sup> RCW 36.45.010 provides: "All claims for damages against any county shall be filed in the manner set forth in chapter 4.96 RCW." Chapter 4.96 RCW states: "Filing a claim for damages within the time allowed by law shall be a condition precedent to the commencement of any action claiming damages." RCW 4.96.010(1).

<sup>4</sup> Washington's Legislature has enacted a comprehensive scheme of wage-and-hour laws to ensure payment of wages and to provide statutory remedies for employees wrongfully deprived of proper wages. *Seattle Prof'l Eng'g Employees Ass'n v. Boeing Co.*, 139 Wn.2d 824, 830, 991 P.2d 1126 (2000). Under these laws, employees can recover: (1) compensation in the amount equivalent to the statutory minimum wage, chapter 49.46 RCW, when their employer fails to pay; (2) wages due at the termination of their employment relationship, chapter 49.48 RCW; and (3) wages an employer has improperly withheld, chapter 49.52 RCW. *Seattle Prof'l Eng'g*, 139 Wn.2d at 830-31.

Such is not the case here, however, because, as Correction Officers acknowledge, the County did pay them their due wages.

RCW 49.52.070 does not provide a statutory remedy for the County's alleged "delay" in paying overtime and other additional wages until the next pay date after Correction Officers earned them.<sup>5</sup> Thus, even viewing the facts in the light most favorable to Correction Officers,<sup>6</sup> we hold that Correction Officers cannot show that the County violated RCW 49.52.070.

The trial court granted summary judgment to the County based on Correction Officers' failure to comply with RCW 36.45.010. But we can affirm a trial court on any alternative basis supported by the record and pleadings, even if the trial court did not

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<sup>5</sup> Although Correction Officers also alleged violations of chapters 49.46 and 49.48 RCW, they failed to request any form of relief under these other wage statutes that differs substantively from chapter 49.52 RCW relief. *See Seattle Prof'l Eng'g*, 139 Wn.2d at 831, 835. Correction Officers cannot claim damages under RCW 49.52.070 for violations of these other wage-and-hour laws. *See* RCW 49.52.070. Moreover, even if Correction Officers had properly requested damages, we would nevertheless reach the same result because neither chapter 49.46 RCW nor chapter RCW 49.48 RCW provide for monetary awards when an employer has in fact paid the employees their due wages, as the County did here. RCW 49.48.010; *Seattle Prof'l Eng'g*, 139 Wn.2d at 831.

Correction Officers cite WAC 296-128-035, a Department of Labor and Industries regulation under the Minimum Wage Act, which requires employers to pay wages at intervals no longer one month. But this regulation applies only to violations of minimum wage laws under chapter 49.46 RCW, not chapters 49.48 and 49.52 RCW. Chapter 296-128 WAC; *see Seattle Prof'l Eng'g*, 139 Wn.2d at 831, 835. As we note earlier in this opinion, monetary damages under the Minimum Wage Act are limited to circumstances in which an employer fails to pay statutory minimum wages, which is not the case here.

<sup>6</sup> The court must consider all facts submitted and all reasonable inferences from them in the light most favorable to the nonmoving party, here, the Correction Officers. *Wilson v. Steinbach*, 98 Wn.2d 434, 437, 656 P.2d 1030 (1982). Summary judgment should be affirmed "only if, from all the evidence, reasonable persons could reach but one conclusion." *Id.*



consider that alternative. *Harberd v. City of Kettle Falls*, 120 Wn. App. 498, 508, 84 P.3d 1241, *review denied*, 152 Wn.2d 1025 (2004). Accordingly, we affirm the trial court's summary judgment dismissal of Correction Officers' action and related requests, based on their failure to show that the County violated any law in paying their additional wages the following month and on their corresponding failure to state a claim for which relief could be granted.<sup>7</sup> CR 8(a), 12(b)(6), 56(c).

Affirmed.

Hunt, J.  
Hunt, J.

We concur:

Houghton, P.J.  
Houghton, P.J.  
Bridgewater, J.  
Bridgewater, J.

<sup>7</sup> Therefore, we do not address the issue of whether RCW 36.45.010 applies to wage-and-hour claims.

296-128-030 << 296-128-035 >> 296-128-050

**WAC 296-128-035****Payment interval.**

All wages due shall be paid at no longer than monthly intervals to each employee on established regular pay days. To facilitate bookkeeping, an employer may implement a regular payroll system in which wages from up to seven days before pay day may be withheld from the pay period covered and included in the next pay period.

[Statutory Authority: RCW 43.22.270, 49.12.020, 49.12.091, 49.12.050, 49.46.020 and 49.46.070. 89-22-016 (Order 89-16), § 296-128-035, filed 10/24/89, effective 11/24/89.]

RCW 49.46.040

**Investigation — Services of federal agencies — Employer's records  
— Industrial homework.**

(1) The director or his designated representatives may investigate and gather data regarding the wages, hours, and other conditions and practices of employment in any industry subject to this chapter, and may enter and inspect such places and such records (and make such transcriptions thereof), question such employees, and investigate such facts, conditions, practices, or matters as he may deem necessary or appropriate to determine whether any person has violated any provision of this chapter, or which may aid in the enforcement of the provisions of this chapter.

(2) With the consent and cooperation of federal agencies charged with the administration of federal labor laws, the director may, for the purpose of carrying out his functions and duties under this chapter, utilize the services of federal agencies and their employees and, notwithstanding any other provision of law, may reimburse such federal agencies and their employees for services rendered for such purposes.

(3) Every employer subject to any provision of this chapter or of any order issued under this chapter shall make, keep, and preserve such records of the persons employed by him and of the wages, hours, and other conditions and practices of employment maintained by him, and shall preserve such records for such periods of time, and shall make reports therefrom to the director as he shall prescribe by regulation as necessary or appropriate for the enforcement of the provisions of this chapter or the regulations thereunder.

(4) The director is authorized to make such regulations regulating, restricting, or prohibiting industrial homework as are necessary or appropriate to prevent the circumvention or evasion of and to safeguard the minimum wage rate prescribed in this chapter, and all existing regulations of the director relating to industrial homework are hereby continued in full force and effect.

[1959 c 294 § 4.]

**RCW 49.46.130**

**Minimum rate of compensation for employment in excess of forty hour work week — Exceptions.**

(1) Except as otherwise provided in this section, no employer shall employ any of his employees for a work week longer than forty hours unless such employee receives compensation for his employment in excess of the hours above specified at a rate not less than one and one-half times the regular rate at which he is employed.

(2) This section does not apply to:

(a) Any person exempted pursuant to RCW 49.46.010(5). The payment of compensation or provision of compensatory time off in addition to a salary shall not be a factor in determining whether a person is exempted under RCW 49.46.010(5)(c);

(b) Employees who request compensating time off in lieu of overtime pay;

(c) Any individual employed as a seaman whether or not the seaman is employed on a vessel other than an American vessel;

(d) Seasonal employees who are employed at concessions and recreational establishments at agricultural fairs, including those seasonal employees employed by agricultural fairs, within the state provided that the period of employment for any seasonal employee at any or all agricultural fairs does not exceed fourteen working days a year;

(e) Any individual employed as a motion picture projectionist if that employee is covered by a contract or collective bargaining agreement which regulates hours of work and overtime pay;

(f) An individual employed as a truck or bus driver who is subject to the provisions of the Federal Motor Carrier Act (49 U.S.C. Sec. 3101 et seq. and 49 U.S.C. Sec. 10101 et seq.), if the compensation system under which the truck or bus driver is paid includes overtime pay, reasonably equivalent to that required by this subsection, for working longer than forty hours per week;

(g) Any individual employed (i) on a farm, in the employ of any person, in connection with the cultivation of the soil, or in connection with raising or harvesting any agricultural or horticultural commodity, including raising, shearing, feeding, caring for, training, and management of livestock, bees, poultry, and furbearing animals and wildlife, or in the employ of the owner or tenant or other operator of a farm in connection with the operation, management, conservation, improvement, or maintenance of such farm and its tools and equipment; or (ii) in packing, packaging, grading, storing or delivering to storage, or to market or to a carrier for transportation to market, any agricultural or horticultural commodity; or (iii) commercial canning, commercial freezing, or any other commercial processing, or with respect to services performed in connection with the cultivation, raising, harvesting, and processing of oysters or in connection with any agricultural or horticultural commodity after its delivery to a terminal market for distribution for consumption;

(h) Any industry in which federal law provides for an overtime payment based on a work week other than forty hours. However, the provisions of the federal law regarding overtime payment based on a work week other than forty hours shall nevertheless apply to employees covered by this section without regard to the existence of actual federal jurisdiction over the industrial activity of the particular employer within this state. For the purposes of this subsection, "industry" means a trade, business, industry, or other activity, or branch, or group thereof, in which individuals are gainfully employed (section 3(h) of the Fair Labor Standards Act of 1938, as amended (Public Law 93-259));

(i) Any hours worked by an employee of a carrier by air subject to the provisions of subchapter II of the Railway Labor Act (45 U.S.C. Sec. 181 et seq.), when such hours are voluntarily worked by the employee pursuant to a shift-trading practice under which the employee has the opportunity in the same or in other work weeks to reduce hours worked by voluntarily offering a shift for trade or reassignment.

(3) No employer shall be deemed to have violated subsection (1) of this section by employing any employee of a retail or service establishment for a work week in excess of the applicable work week specified in subsection (1) of this section if:

(a) The regular rate of pay of the employee is in excess of one and one-half times the minimum hourly rate required under RCW 49.46.020; and

(b) More than half of the employee's compensation for a representative period, of not less than one month, represents commissions on goods or services.

In determining the proportion of compensation representing commissions, all earnings resulting from the application of a bona fide commission rate is to be deemed commissions on goods or services without regard to whether the computed commissions exceed the draw or guarantee.

(4) No employer of commissioned salespeople primarily engaged in the business of selling automobiles, trucks, recreational vessels, recreational vessel trailers, recreational vehicle trailers, recreational campers, manufactured housing, or farm implements to ultimate purchasers shall violate subsection (1) of this section with respect to such commissioned salespeople if the commissioned salespeople are paid the greater of:

(a) Compensation at the hourly rate, which may not be less than the rate required under RCW 49.46.020, for each hour worked up to forty hours per week, and compensation of one and one-half times that hourly rate for all hours worked over forty hours in one week; or

(b) A straight commission, a salary plus commission, or a salary plus bonus applied to gross salary.

(5) No public agency shall be deemed to have violated subsection (1) of this section with respect to the employment of any employee in fire protection activities or any employee in law enforcement activities (including security personnel in correctional institutions) if: (a) In a work period of twenty-eight consecutive days the employee receives for tours of duty which in the aggregate exceed two hundred forty hours; or (b) in the case of such an employee to whom a work period of at least seven but less than twenty-eight days applies, in his or her work period the employee receives for tours of duty which in the aggregate exceed a number of hours which bears the same ratio to the number of consecutive days in his or her work period as two hundred forty hours bears to twenty-eight days; compensation at a rate not less than one and one-half times the regular rate at which he or she is employed.

[1998 c 239 § 2. Prior: 1997 c 311 § 1; 1997 c 203 § 2; 1995 c 5 § 1; 1993 c 191 § 1; 1992 c 94 § 1; 1989 c 104 § 1; prior: 1977 ex.s. c 4 § 1; 1977 ex.s. c 74 § 1; 1975 1st ex.s. c 289 § 3.]

#### Notes:

**Findings -- Intent -- 1998 c 239:** "The legislature finds that employees in the airline industry have a long-standing practice and tradition of trading shifts voluntarily among themselves. The legislature also finds that federal law exempts airline employees from the provisions of federal overtime regulations. This act is intended to specify that airline industry employers are not required to pay overtime compensation to an employee agreeing to work additional hours for a coemployee." [1998 c 239 § 1.]

**Intent -- Collective bargaining agreements -- 1998 c 239:** "This act does not alter the terms, conditions, or practices contained in any collective bargaining agreement." [1998 c 239 § 3.]

**Retroactive application -- 1998 c 239:** "This act is remedial in nature and applies retroactively." [1998 c 239 § 4.]

**Severability -- 1998 c 239:** "If any provision of this act or its application to any person or circumstance is held invalid, the remainder of the act or the application of the provision to other persons or circumstances is not affected." [1998 c 239 § 5.]

**Construction -- 1997 c 203:** "Nothing in this act shall be construed to alter the terms, conditions, or practices contained in any collective bargaining agreement in effect at the time of the effective date of this act [July 27, 1997] until the expiration date of such agreement." [1997 c 203 § 4.]

**Intent -- Application -- 1995 c 5:** "This act is intended to clarify the original intent of RCW 49.46.010(5)(c). This act applies to all administrative and judicial actions commenced on or after February 1, 1995, and pending on March 30, 1995, and such actions commenced on or after March 30, 1995." [1995 c 5 § 2.]

**Effective date -- 1995 c 5:** "This act is necessary for the immediate preservation of the public peace, health, or safety, or support of the state government and its existing public institutions, and shall take effect immediately [March 30, 1995]." [1995 c 5 § 3.]

**RCW 49.46.090**

**Payment of wages less than chapter requirements — Employer's liability — Assignment of wage claim.**

(1) Any employer who pays any employee less than wages to which such employee is entitled under or by virtue of this chapter, shall be liable to such employee affected for the full amount of such wage rate, less any amount actually paid to such employee by the employer, and for costs and such reasonable attorney's fees as may be allowed by the court. Any agreement between such employee and the employer to work for less than such wage rate shall be no defense to such action.

(2) At the written request of any employee paid less than the wages to which he is entitled under or by virtue of this chapter, the director may take an assignment under this chapter or as provided in RCW 49.48.040 of such wage claim in trust for the assigning employee and may bring any legal action necessary to collect such claim, and the employer shall be required to pay the costs and such reasonable attorney's fees as may be allowed by the court.

[1959 c 294 § 9.]

## RCW 49.48.010

**Payment of wages due to employee ceasing work to be at end of pay period — Exceptions — Authorized deductions or withholdings.**

When any employee shall cease to work for an employer, whether by discharge or by voluntary withdrawal, the wages due him on account of his employment shall be paid to him at the end of the established pay period: PROVIDED, HOWEVER, That this paragraph shall not apply when workers are engaged in an employment that normally involves working for several employers in the same industry interchangeably, and the several employers or some of them cooperate to establish a plan for the weekly payment of wages at a central place or places and in accordance with a unified schedule of paydays providing for at least one payday each week; but this subsection shall not apply to any such plan until ten days after notice of their intention to set up such a plan shall have been given to the director of labor and industries by the employers who cooperate to establish the plan; and having once been established, no such plan can be abandoned except after notice of their intention to abandon such plan has been given to the director of labor and industries by the employers intending to abandon the plan: PROVIDED FURTHER, That the duty to pay an employee forthwith shall not apply if the labor-management agreement under which the employee has been employed provides otherwise.

It shall be unlawful for any employer to withhold or divert any portion of an employee's wages unless the deduction is:

- (1) Required by state or federal law; or
- (2) Specifically agreed upon orally or in writing by the employee and employer; or
- (3) For medical, surgical or hospital care or service, pursuant to any rule or regulation: PROVIDED, HOWEVER, That the deduction is openly, clearly and in due course recorded in the employer's books and records.

Paragraph \*three of this section shall not be construed to affect the right of any employer or former employer to sue upon or collect any debt owed to said employer or former employer by his employees or former employees.

[1971 ex.s. c 55 § 1; 1947 c 181 § 1; 1905 c 112 § 1; 1888 c 128 § 1; Rem. Supp. 1947 § 7594.]

**Notes:**

**\*Reviser's note:** The reference to paragraph three of this section appears to be erroneous. An amendment to Engrossed Senate Bill No. 137 [1971 ex.s. c 55] deleted the first paragraph of the section without making a corresponding change in the reference to "paragraph three." It was apparently intended that the phrase "paragraph three of this section" refer to the paragraph beginning "It shall be unlawful . . .," which now appears as the second paragraph of the section.

**Saving — 1888 c 128:** "This act is not to be construed as affecting any bona fide contract heretofore entered into contrary to its provisions and existing at the date of the passage hereof, and continuing by reason of limitation of said contract being still in force." [1888 c 128 § 4; no RRS.]

**Effective date — 1888 c 128:** "This act is to take effect on and after its approval." [1888 c 128 § 5; no RRS.]

**General repealer — 1888 c 128:** "All laws or parts of laws in conflict with this act be and the same are hereby repealed." [1888 c 128 § 6; no RRS.]

The foregoing annotations apply to RCW 49.48.010 through 49.48.030.

**RCW 49.52.050****Rebates of wages — False records — Penalty.**

Any employer or officer, vice principal or agent of any employer, whether said employer be in private business or an elected public official, who

(1) Shall collect or receive from any employee a rebate of any part of wages theretofore paid by such employer to such employee; or

(2) Wilfully and with intent to deprive the employee of any part of his wages, shall pay any employee a lower wage than the wage such employer is obligated to pay such employee by any statute, ordinance, or contract; or

(3) Shall wilfully make or cause another to make any false entry in any employer's books or records purporting to show the payment of more wages to an employee than such employee received; or

(4) Being an employer or a person charged with the duty of keeping any employer's books or records shall wilfully fail or cause another to fail to show openly and clearly in due course in such employer's books and records any rebate of or deduction from any employee's wages; or

(5) Shall wilfully receive or accept from any employee any false receipt for wages;

Shall be guilty of a misdemeanor.

[1941 c 72 § 1; 1939 c 195 § 1; Rem. Supp. 1941 § 7612-21.]

**Notes:**

**Severability — 1939 c 195:** "If any section, subsection, sentence or clause of this act shall be adjudged unconstitutional, such adjudication shall not affect the validity of the act as a whole or of any section, subsection, sentence or clause thereof not adjudged unconstitutional." [1939 c 195 § 5; RRS § 7612-25.] This applies to RCW 49.52.050 through 49.52.080.



**RCW 49.52.070****Civil liability for double damages.**

Any employer and any officer, vice principal or agent of any employer who shall violate any of the provisions of subdivisions (1) and (2) of RCW 49.52.050 shall be liable in a civil action by the aggrieved employee or his assignee to judgment for twice the amount of the wages unlawfully rebated or withheld by way of exemplary damages, together with costs of suit and a reasonable sum for attorney's fees: PROVIDED, HOWEVER, That the benefits of this section shall not be available to any employee who has knowingly submitted to such violations.

[1939 c 195 § 3; RRS § 7612-23.]

NOVEMBER 15, 1989

OLYMPIA, WASHINGTON

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coverage to the plan. Before any person shall be re-enrolled in the plan, that person must complete a new application for enrollment and must be determined by the plan to be otherwise eligible for enrollment as of the date of application.

(8) Once every six months, the plan will request verification of information from enrollees ("recertification"), which may include a request to complete a new application form and submit required documentation. At recertification, enrollees will be required to report their ((monthly)) gross family income for the ((preceding six)) most recent complete calendar month((s)) as of the recertification date specified by the plan, and to provide the same documentation of such income as required of applicants. The plan may request information more frequently from an enrollee for the purpose of verifying eligibility if the plan has good cause to believe that the enrollee's income, residence, family size or other eligibility criteria may have changed since the date on which information was last received by the plan. Enrollees shall be given at least twenty days from the date of any such information request to respond to the request. Failure to respond within the time designated in any information request shall result in a second request from the plan. Failure to respond within the time designated in any second request for information may result in disenrollment of the enrollee. Each enrollee is responsible for notifying the plan within thirty days of any changes which could affect the enrollee's eligibility or premium responsibility.

**Reviser's note:** The bracketed material preceding the section above was supplied by the code reviser's office.

**Reviser's note:** The spelling error in the above section occurred in the copy filed by the agency and appears in the Register pursuant to the requirements of RCW 34.08.040.

#### WSR 89-22-015

##### PERMANENT RULES

#### DEPARTMENT OF LABOR AND INDUSTRIES

[Order 89-15—Filed October 24, 1989, 1:22 p.m.]

Date of Adoption: October 24, 1989.

Purpose: Implement provisions of section 84, chapter 380, Laws of 1989, entitling agricultural employees to pay statements and requiring employer recordkeeping.

Statutory Authority for Adoption: RCW 43.22.270, chapter 380, Laws of 1989.

Other Authority: Chapter 49.46 RCW.

Pursuant to notice filed as WSR 89-16-088 on August 2, 1989; and WSR 89-21-010 on October 6, 1989.

Changes Other than Editing from Proposed to Adopted Version: Wages shall be paid at less than monthly intervals if required by federal law. Consistent with recordkeeping requirements for other employers, lag payroll is authorized. Pay statements are to identify the employee, show the number of hours worked and the employer's name, address and telephone number. Records may be transcribed if copying facilities are unavailable.

Effective Date of Rule: Thirty days after filing.

October 24, 1989

Joseph A. I

Dir

#### NEW SECTION

WAC 296-131-001 **APPLICABILITY.** The standards, adopted pursuant to sections 83 through chapter 380, Laws of 1989, shall apply to persons employed in agricultural labor as defined in R 50.04.150.

#### NEW SECTION

WAC 296-131-010 **PAYMENT INTERVAL.** Wages due shall be paid at no longer than monthly intervals to each employee on established regular days, unless federal law requires more frequent payments. To facilitate bookkeeping, an employer may implement a regular payroll system in which wages fall up to seven days before pay day may be withheld from the pay period covered and included in the next period.

#### NEW SECTION

WAC 296-131-015 **PAY STATEMENTS.** A statement shall be provided to each employee at the time wages are paid. The pay statement shall identify employee, show the number of hours worked or number of days worked based on an eight-hour day, rate or rates of pay, the number of piece work units earned if paid on a piece work basis, the gross pay, pay period, all deductions and the purpose of each deduction for the respective pay period. A pay statement shall also include the employer's name, address, and telephone number.

#### NEW SECTION

WAC 296-131-017 **EMPLOYMENT RECORDS.**  
(1) Every employer shall keep for at least three years record of the name, address, and occupation of each employee, dates of employment, rate or rates of pay, amount paid each pay period to each such employee and the hours worked.

(2) Every employer shall make the records described in subsection (1) of this section available to the director or the director's authorized representative at any time for inspection and transcription or copying and to each employee, upon request for that employee's work record at any reasonable time.

#### WSR 89-22-016

##### PERMANENT RULES

#### DEPARTMENT OF LABOR AND INDUSTRIES

[Order 89-16—Filed October 24, 1989, 1:25 p.m.]

Date of Adoption: October 24, 1989.

Purpose: To standardize various statutory requirements for records access and payment procedures.

Citation of Existing Rules Affected by this Order: Amending WAC 296-126-023, 296-126-050 and 296-128-025.

Statutory Authority for Adoption: RCW 43.22.270, 49.12.020, 49.12.091, 49.12.050, 49.46.020 and 49.46.070.

Pursuant to notice filed as WSR 89-16-089 on August 2, 1989; and WSR 89-21-011 on October 6, 1989.

Changes Other than Editing from Proposed to Adopted Version: A sentence is added to clarify that the existing policy allowing payroll lag continues. It is clarified that records may be transcribed if copying facilities are unavailable.

Effective Date of Rule: Thirty days after filing.

October 24, 1989

Joseph A. Dear

Director

#### AMENDATORY SECTION (Amending Regulation 294.7.001 (part), filed 12/30/60)

WAC 296-128-025 PLACE FOR KEEPING RECORDS AND AVAILABILITY FOR INSPECTION. Each employer shall keep the records required by this regulation safe and accessible at the place or places of employment or at one or more established central recordkeeping offices where such records are customarily maintained ((and)). All such records shall be open at any time to inspection and transcription or copying by the director and his duly authorized representative and to the employee, upon request for that employee's work record, at any reasonable time.

#### NEW SECTION

WAC 296-128-035 PAYMENT INTERVAL. All wages due shall be paid at no longer than monthly intervals to each employee on established regular pay days. To facilitate bookkeeping, an employer may implement a regular payroll system in which wages from up to seven days before pay day may be withheld from the pay period covered and included in the next pay period.

#### AMENDATORY SECTION (Amending Order 74-9, filed 3/13/74, effective 4/15/74)

WAC 296-126-023 PAYMENT INTERVAL. All wages due shall be paid at no longer than monthly intervals to each employee on established regular pay days ~~((except that wages for no more than the last seven calendar days may be withheld from the pay period covered for inclusion in the next pay period for bookkeeping purposes))~~. To facilitate bookkeeping, an employer may implement a regular payroll system in which wages from up to seven days before pay day may be withheld from the pay period covered and included in the next pay period.

#### AMENDATORY SECTION (Amending Order 74-9, filed 3/13/74, effective 4/15/74)

WAC 296-126-050 EMPLOYMENT RECORDS.

(1) Every employer shall keep for at least ((five)) three

years a record of the name, address, and occupation of each employee, dates of employment, rate or rates of pay, amount paid each pay period to each such employee and the hours ((or days)) worked.

(2) Every employer shall make the record described in subsection (1) available to the employee, upon request, at any reasonable time.

(3) Every employer shall, upon written request by the employee, furnish within ten working days of the request to each employee who is discharged a signed written statement, setting forth the reasons for such discharge and the effective date thereof.

#### WSR 89-22-017

#### PROPOSED RULES

#### HIGHER EDUCATION PERSONNEL BOARD

[Filed October 24, 1989, 2:55 p.m.]

#### Original Notice.

Title of Rule: WAC 251-01-415 Temporary appointment; 251-04-040 Exemptions; 251-12-600 Remedial action; and 251-19-120 Appointment—Temporary.

Purpose: To amend recently adopted temporary rules which become effective October 1, 1989, to clarify how persons hired prior to October 1, 1989, are to be affected by the new rules when they become effective.

Statutory Authority for Adoption: RCW 28B.16.100.

Statute Being Implemented: RCW 28B.16.040(2) and 70.24.300.

Summary: Rule modification specifies how to administer new temporary employee rules as they affect current temporary employees.

Reasons Supporting Proposal: To specify the original hire date of all current temporary employees to facilitate administration of new rules; to minimize potential terminations and remedial actions due to application of rules adopted June 1, 1989, effective October 1, 1989.

Name of Agency Personnel Responsible for Drafting: Bill Gunther, 1202 Black Lake Boulevard, FT-11, Olympia, 98504, 753-0380; Implementation and Enforcement: John Spitz, 1202 Black Lake Boulevard, FT-11, Olympia, 98504, 753-3730.

Name of Proponent: Higher Education Personnel Board staff, governmental.

Rule is not necessitated by federal law, federal or state court decision.

Explanation of Rule, its Purpose, and Anticipated Effects: Treats current temporary employees like temporary employees hired on October 1, 1989. Facilitates implementation of rules adopted on June 1, 1989, effective October 1, 1989. Facilitates transition from old to new rules.

Proposal Changes the Following Existing Rules: Clarifies how current temporary employees are to be affected by rules which become effective October 1, 1989.

No small business economic impact statement is required for this proposal by chapter 19.85 RCW.

Hearing Location: President's Board Room, South Seattle Community College, Seattle, Washington, on December 7, 1989, at 10:00 a.m.

# Washington State Register

AUGUST 16, 1989

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Purpose: Implements provisions of section 84, chapter 380, Laws of 1989, providing agricultural employees rights to pay statements and requiring employer recordkeeping.

Statutory Authority for Adoption: RCW 43.22.270 and chapter 49.46 RCW.

Statute Being Implemented: Chapter 380, Laws of 1989.

Summary: Agricultural employers are required to provide employees pay statements when wages are paid. Wages shall be paid at least monthly. Employment records shall be kept for three years and are open to inspection and copying by the department and the employee.

Reasons Supporting Proposal: Availability of pay statement, a minimum wage payment schedule and the ability to review employment records are essential to ensure adherence to the Minimum Wage Act.

Name of Agency Personnel Responsible for Drafting, Implementation and Enforcement: Mark M. McDermott, 925 Plum Street, Olympia, WA 98504, 753-3487.

Name of Proponent: Department of Labor and Industries, governmental.

Rule is not necessitated by federal law, federal or state court decision.

Explanation of Rule, its Purpose, and Anticipated Effects: The rule sets forth requirements for pay statements that must accompany wage payments, requires that wage payment occur at least once a month, and allows for review of employment records by the department, and upon employee request for his own records, by the employee. The rule is expected to assist agricultural employees in understanding the system under which they are paid.

Proposal does not change existing rules.

Small Business Economic Impact Statement: The Washington Regulatory Fairness Act, chapter 19.58 RCW, requires that proposed rules which have an economic impact on more than 20 percent of all industries or more than 10 percent of the business in any one industry shall be reviewed to determine if the cost of coming into compliance with the proposed agency rules will create a disproportionately higher economic burden on small business in comparison with the cost of compliance for large business. The act defines a small business as an employer with fifty or fewer employees. With respect to WAC 296-131-001 through 296-131-017, the findings of the agency are as follows: The legislature has given the department the responsibility [to] adopt and enforce rules; the rules are primarily of a procedural nature to allow all affected parties to have better knowledge of statutory obligations; and the recordkeeping and pay statements requirements are expected to impact both small and large agricultural employers. The burden on small employers will not be disproportionately higher.

Hearing Location: General Administration Building, Olympia, Washington 98504, on September 6, 1989, at 9:00 a.m.; and at J. M. Perry Institute, 2011 West Washington Avenue, Yakima, WA, on September 6, 1989, at 3:30 p.m.

Submit Written Comments to: Mark McDermott, Assistant Director, ESAC, 925 Plum Street, Olympia, WA 98504, by September 6, 1989.

Date of Intended Adoption: October 6, 1989.

August 2, 1989  
Joseph A. Dear  
Director

#### NEW SECTION

WAC 296-131-001 APPLICABILITY. These standards, adopted pursuant to sections 83 through 86, chapter 380, Laws of 1989, shall apply to persons employed in agricultural labor as defined in RCW 50.04.150.

#### NEW SECTION

WAC 296-131-010 PAYMENT INTERVAL. All wages due shall be paid at no longer than monthly intervals to each employee on established regular pay days.

#### NEW SECTION

WAC 296-131-015 PAY STATEMENTS. A pay statement shall be provided to each employee at the time wages are paid showing the pay basis in hours or days worked, the rate or rates of pay, the number of piece work units earned if paid on a piece work basis, the gross pay, all deductions and the purpose of each deduction for the respective pay period.

#### NEW SECTION

WAC 296-131-017 EMPLOYMENT RECORDS. (1) Every employer shall keep for at least three years a record of the name, address, and occupation of each employee, dates of employment, rate or rates of pay, amount paid each pay period to each such employee and the hours or days worked.

(2) Every employer shall make the record described in subsection (1) of this section available to the director or the director's authorized representative at any time for inspection and copying and to the employee, upon request for that employee's work record, at any reasonable time.

WSR 89-16-089

PROPOSED RULES

DEPARTMENT OF LABOR AND INDUSTRIES

[Filed August 2, 1989, 9:15 a.m.]

Original Notice.

Title of Rule: Minimum wage recordkeeping and payment procedures.

Purpose: To standardize various statutory requirements for records access and payment procedures.

Statutory Authority for Adoption: RCW 43.22.270.

Statute Being Implemented: RCW 49.12.020, 49.12.091 and 49.12.050.

Summary: Recordkeeping requirements under chapters 49.12 and 49.46 RCW are standardized at three years; monthly wage payment is established; and employee access to employment records is increased to improve enforcement of minimum wage laws.

Reasons Supporting Proposal: Confusion currently exists regarding different recordkeeping provisions under chapters 49.12 and 49.46 RCW. The proposed rules move toward uniform standards.

Name of Agency Personnel Responsible for Drafting, Implementation and Enforcement: Mark M. McDermott, 925 Plum Street, Olympia, 753-3487.

Name of Proponent: Department of Labor and Industries, governmental.

Rule is not necessitated by federal law, federal or state court decision.

Explanation of Rule, its Purpose, and Anticipated Effects: The proposed rules amend or adopt provisions requiring employers to maintain employment records, make those records available for inspection and copying, and to pay employee wages at least monthly. With extension of the minimum wage laws to almost all state employees as a result of the passage of Initiative 518, the department considers it appropriate to establish uniform recordkeeping and pay interval requirements under both statutes requiring payment of a minimum wage. The proposed rules are expected to minimize confusion and simplify procedures for business, workers, and the department.

Proposal Changes the Following Existing Rules: WAC 296-126-023, delete language allowing for lag payrolls; WAC 296-126-050, reduce the length of time employers are required to retain employment records from five to three years; and WAC 296-128-025, expand access to employment records to all persons covered by the Minimum Wage Act.

No small business economic impact statement is required for this proposal by chapter 19.85 RCW.

Hearing Location: General Administration Building, Olympia, Washington, on September 6, 1989, at 9:00 a.m.; and at J. M. Perry Institute, 2011 West Washington Avenue, Yakima, WA, on September 6, 1989, at 3:30 p.m.

Submit Written Comments to: Mark M. McDermott, Assistant Director, ESAC, 925 Plum Street, Olympia, WA 98504, by September 6, 1989.

Date of Intended Adoption: October 6, 1989.

August 2, 1989  
Joseph A. Dear  
Director

**AMENDATORY SECTION** (Amending Order 74-9, filed 3/13/74, effective 4/15/74)

WAC 296-126-023 PAYMENT INTERVAL. All wages due shall be paid at no longer than monthly intervals to each employee on established regular pay days ((except that wages for no more than the last seven calendar days may be withheld from the pay period covered for inclusion in the next pay period for bookkeeping purposes)).

**AMENDATORY SECTION** (Amending Order 74-9, filed 3/13/74, effective 4/15/74)

WAC 296-126-050 EMPLOYMENT RECORDS. (1) Every employer shall keep for at least ((five)) three years a record of the name, address, and occupation of each employee, dates of employment, rate or rates of pay, amount paid each pay period to each such employee and the hours or days worked.

(2) Every employer shall make the record described in subsection (1) available to the employee, upon request, at any reasonable time.

(3) Every employer shall, upon written request by the employee, furnish within ten working days of the request to each employee who is discharged a signed written statement, setting forth the reasons for such discharge and the effective date thereof.

**AMENDATORY SECTION** (Amending Regulation 294.7.001 (part), filed 12/30/60)

WAC 296-128-025 PLACE FOR KEEPING RECORDS AND AVAILABILITY FOR INSPECTION. Each employer shall keep the records required by this regulation safe and accessible at the place or

places of employment or at one or more established central record-keeping offices where such records are customarily maintained ((and)). All such records shall be open at any time to inspection and ((transcription)) copying by the director and his duly authorized representative, and to the employee, upon request for that employee's work record, at any reasonable time.

**NEW SECTION**

WAC 296-128-035 PAYMENT INTERVAL. All wages due shall be paid at no longer than monthly intervals to each employee on established regular pay days.

**WSR 89-16-090**

**PERMANENT RULES**

**DEPARTMENT OF REVENUE**

[Order 89-11—Filed August 2, 1989, 1:18 p.m.]

I, Edward L. Faker, interim assistant director of the Department of Revenue, do promulgate and adopt at Olympia, Washington, the annexed rules relating to Refuse-solid waste collection business—Core deposits and credits, battery core charges, and tires, amending WAC 458-20-250.

This action is taken pursuant to Notice No. WSR 89-13-087 filed with the code reviser on June 21, 1989. These rules shall take effect thirty days after they are filed with the code reviser pursuant to RCW 34.04.040(2).

This rule is promulgated under the general rule-making authority of the Department of Revenue as authorized in RCW 82.32.300.

The undersigned hereby declares that the agency has complied with the provisions of the Open Public Meetings Act (chapter 42.30 RCW), the Administrative Procedure Act (chapter 34.04 RCW) and the State Register Act (chapter 34.08 RCW) in the adoption of these rules.

APPROVED AND ADOPTED August 2, 1989.

By Edward L. Faker  
Interim Assistant Director

**AMENDATORY SECTION** (Amending Order ET 86-14, filed 7/22/86)

WAC 458-20-250 REFUSE-SOLID WASTE COLLECTION BUSINESS((-)) - CORE DEPOSITS AND CREDITS, BATTERY CORE CHARGES, AND TIRES (1) Introduction. This section administers the taxes on solid waste collection and the special provisions for core deposits and credits, battery core charges, and tires.

((1)) (a) ((Introduction:)) Chapter 282, Laws of 1986((, effective June 11, 1986;)) establishe((s))d ((for tax purposes, and defines)) the specific business activity of the "refuse collection business((-))" ((Under 1985 law (chapter 471, Laws of 1985) this activity had been included as a "public service business" and given a special tax rate under the public utility tax of chapter 82.16 RCW. The 1986 law removes refuse collection activities from the public utility tax on gross receipts)) and impose((s))d a "refuse collection tax" similar in nature to retail sales tax. The burden of this tax is upon the ultimate consumer of the refuse collection service. The tax rate is three and six tenths percent (.036), and the tax